REMARKS

Before entry of this Amendment, claims 1-30 were pending in the application. Claims 28-30 have been previously withdrawn. After entry of this Amendment claims 1-27 remain pending under examination. The number of total claims has not been increased, and the number of independent claims has not been increased beyond the number for which payment previously had been made.

Applicants have carefully considered the Examiner's Final Action of May 11, 2007, and the references cited therein. The following is a brief summary of the Action. Claims 1-5 and 7-27 were rejected under 35 U.S.C. 103(a) as being unpatentable over Heyn et al (U.S. Patent 6,106,959) in view of Haffner et al (U.S. Patent 6,045,900). Claim 6 was rejected under 35 U.S.C. 103(a) as being unpatentable over Heyn et al in view of Haffner et al as applied to claim 1, and further in view of Brady et al (U.S. Patent 6,258,308).

The provisional rejections of claims 1-27 over claims 22-30 of co-pending Application No. 10/703,761 and claims 30-33 and 37-43 of co-pending Application No. 10/918,553 for obviousness-type double patenting are noted. Application No. 10/703,761 has become U.S. Patent No. 7,220,478, and a terminal disclaimer is submitted herewith together with a terminal disclaimer for Application No. 10/918,553. Applicants therefore respectfully request withdrawal of the obviousness-type double patenting rejections.

Claim 1 calls for a breathable laminate formed from a nonwoven support layer bonded to an oriented film. The oriented film of each of claims 1-27 requires "a letdown resin phase" and a "carrier resin phase." Each of claims 1-27 requires the "carrier resin

phase" to comprise "a filler." As depicted for example in the cross-sectional illustration of applicants' FIG. 1, substantially all of the filler particles in the oriented film are contained within discrete regions of the carrier resin phase and thus the filler particles are thereby separated from contact with the letdown phase, and each of these discrete regions of the carrier resin phase is completely intermixed with and surrounded by the letdown resin phase.

Applicants hereby incorporate their previously stated arguments for patentability herein.

As to the rejections of claims 1-5 and 7-27 under 35 U.S.C. 103(a) over Heyn et al in view of Haffner et al, applicants respectfully assert the following additional arguments in traverse of these rejections.

Because the Heyn et al film is produced using a segmented extrusion die wherein the carrier resin is only brought together with the letdown resin as the two constituents are co-extruded side-by-side, Heyn et al cannot duplicate the structure of applicants' film wherein each of the discrete regions of the carrier resin phase is completely intermixed with and surrounded by the letdown resin phase.

The very first sentence of the Abstract of Heyn et al states (emphasis added):

> A polymer film comprising at least **first and second contiguous and coextruded portions**, wherein the first portion is extruded from a first polymer composition containing a filler material in an amount sufficient to increase the water vapor permeability of the first portion relative to the second portion, and the second portion is extruded from a second polymer composition such that a tensile strength of the second portion is greater than the tensile strength of the first portion.

Accordingly, Heyn et al column 2, lines 40-44, states:

> The polymer films of the present invention can be formed by **extrusion using a segmented extrusion die of the type disclosed U.S. Pat. No. 4,435,141**, assigned to Polyloom Corporation of America ("the Polyloom '141 Patent"), which is incorporated herein by reference.

Review of the '141 Patent indicates that any film produced by extrusion using a segmented extrusion die of the '141 Patent cannot satisfy applicants' claim 1 requirement that "substantially all of said filler in said oriented film is contained only within discrete regions of said carrier resin phase and thereby separated from contact with said let down phase" and that "each of these discrete regions of the carrier resin phase is completely intermixed and surrounded by the letdown resin phase."

Exhibit A (not drawn to scale) schematically shows a cross-sectional view of a film produced by extrusion of two feed stocks of carrier resin and letdown resin as would result from using a segmented extrusion die like the '141 Patent. The portion of Exhibit A with the more widely spaced apart cross-hatching lines is intended to schematically represent the carrier resin phase. The filler 17 in the carrier resin phase is represented by circles that are surrounded by additional circles representing the borders of the voids or pores that surround the filler 17. Indeed, because the segmented extrusion die apparatus of the '141 Patent produces a common interface for the two different feed stocks, the resulting Heyn et al film has a structure wherein the discrete regions of the carrier resin phase are not completely intermixed with and surrounded by the letdown resin phase. Thus, Heyn et al fails to disclose that each of the discrete regions of the carrier resin phase is completely intermixed with and surrounded by the letdown resin phase.

Moreover, in applicants' claim 1, substantially all of the filler must be separated from contact with the letdown phase. As shown in attached Exhibit A, a substantial portion of the filler 17 contacts the letdown phase 15 in a film extruded according to Heyn et al, and thus substantially all of the filler is not separated from contact with the letdown phase in a film extruded according to Heyn et al.

Haffner et al fails to overcome these deficiencies of Heyn et al. Applicants therefore respectfully assert that the combination of Heyn et al and Haffner et al does not render Applicants' claims 1-27 unpatentable.

Claim 23 requires the breathable laminate to have a moisture vapor transmission rate of about 5000 $g/m^2/24$ hours to about 10,000 $g/m^2/24$ hours.

Lines 3-4 of subparagraph d on page 4 of the May 11, 2007, Final Action state:

> Haffner et al. teach a WVTR in excess of 1500 $g/m^2/day$.
> This anticipates the breathability of instant claim 23.

Lines 1-3 of subparagraph e on page 4 of the May 11, 2007, Final Action state:

> It is noted herein that the teachings of Haffner et al. include WVTR in excess of 1500 $g/m^2/day$. It is the Examiner's interpretation that such a teaching encompasses the ranges of 5,000 and 10,000 $g/m^2/day$ as claimed herein.

However, applicants respectfully submit that the Examiner's interpretation is unreasonable because even the lower end of the claimed range is a factor of 3 times greater than the disclosed WVTR level of Haffner et al. Moreover, it is more plausible to state that the teaching of Haffner et al suggests 1600 $g/m^2/day$, which is not within the range of claim 23.

Accordingly, it is respectfully submitted that claim 1 is allowable over the art of record. Claims 2-27 only further patentably define the invention of claim 1 and are thus

allowable for at least the reasons claim 1 is allowable. Applicants therefore respectfully submit that claims 1-27 are patentable under 35 U.S.C. § 103(a) over Heyn et al in view of Haffner et al.

For the reasons explained below, applicants respectfully traverse the rejection of claim 6 under 35 U.S.C. 103(a) over Heyn et al in view of Haffner et al as applied to claim 1, and further in view of Brady et al. Brady et al fails to correct the deficiencies noted above in Heyn et al in view of Haffner et al as applied to claim 1, and thus claim 6 is patentable under 35 U.S.C. 103(a) over Heyn et al in view of Haffner et al as applied to claim 1, and further in view of Brady et al.

Moreover, claim 6 requires the carrier resin ethylene polymer or copolymer to have a melt index of at least about 20 grams per 10 minutes. Brady et al is cited for its disclosure of a film with a melt index of 25 grams per 10 minutes. The Final Office Action of May 11, 2007 states at lines 5 – 7 of paragraph 12 on page 9 that (emphasis added):

> Examiner has relied upon Brady et al. to teach that a range of LDPEs **with broader Melt Indicies** may be used successfully to form a breathable film comprising calcium carbonate for use in absorbent articles.

However, when one examines the highlighted phrase in the above quotation, one realizes that Brady et al cannot suggest to the person of ordinary skill that a range of LDPEs **with broader Melt Indicies than are present in Heyn et al** may be used because Brady et al is not constructed in the same manner as the oriented film of claim 6 with substantially all of the filler contained only within discrete regions of the carrier resin phase and thereby separated from contact with the letdown phase and wherein each of the discrete regions of the carrier resin phase is completely surrounded by the

letdown resin phase. Brady et al column 11, lines 30 – 36, calls for obtaining "a uniform dispersion of the filler in the polymer." The Heyn et al film, which is closer to that of the claim in this regard, calls for a much different level of melt index. Per Heyn et al, column 3, lines 12 – 14, the ethylene copolymer (LLDPE) of this carrier resin phase has "a melt index (MI) of about 0.1 to about 5.0 grams per 10 minutes." The conclusion of obviousness is therefore reached only by selecting a single feature out of a dissimilar film disclosed in Brady et al. The particular selection of that feature is guided solely by applicants' specification.

Applicants therefore respectfully submit that claim 6 is patentable under 35 U.S.C. 103(a) over Heyn et al in view of Haffner et al as applied to claim 1, and further in view of Brady et al.

Applicants respectfully request reconsideration and reexamination of claims 1-27, as presented herein, and submit that these claims are in condition for allowance and should be passed to issue.

If any fee or extension of time is required to obtain entry of this Amendment, the undersigned hereby petitions the Commissioner to grant any necessary time extension and authorizes charging Deposit Account No. 04-1403 for any such fee not submitted herewith. The Examiner is encouraged to contact the undersigned at his convenience should he have any questions regarding this matter or require any additional information.

Respectfully submitted,

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